

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)No.CR11-70RAJ
)
ROMAN SELEZNEV,)October 27, 2015
)
Defendant.)Seattle, WA

TRANSCRIPT OF FARETTA HEARING PROCEEDINGS
BEFORE THE HONORABLE RICHARD A. JONES
UNITED STATES DISTRICT COURT JUDGE

For the Plaintiff:	United States Attorneys Office NORMAN BARBOSA SETH WILKINSON 700 Stewart Street Suite 5220 Seattle, WA 98101
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For the Defendant:	Calfo Harrigan Lehy & Eakes ANDREA OSTROVSKY ANGELO CALFO 999 Third Avenue Suite 4400 Seattle, WA 98104
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Interpreters:	LINDA NOBLE KRISTINA TERRA
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REPORTED BY: Yvonne A. Southworth, CCR No. 2129.

1 (Defendant present, in custody.)

2 THE COURT: Good morning. Please be seated.

3 THE CLERK: We're here in the matter of
4 United States versus Roman Seleznev, cause number
5 CR11-70, assigned to this Court. If counsel and the
6 interpreter could please rise and make your appearances
7 for the record.

8 MR. BARBOSA: Good morning, Your Honor. Norm
9 Barbosa, Seth Wilkinson, and Harold Chun for the United
10 States. Mr. Chun is from the Department of Justice,
11 Computer Crimes and Intellectual Property Section. He
12 is filing a notice of appearance of counsel for the
13 Government.

14 THE COURT: Thank you for being here.

15 MS. OSTROVSKY: Good morning, Your Honor.
16 Andrea Ostrovsky and Angelo Calfo on behalf of
17 defendant, Roman Seleznev. We have two interpreters
18 today, Linda Noble and also Christina Terra.

19 THE COURT: Thank you.

20 Thank you, interpreters, for being here.

21 I must advise the interpreters first. If at
22 any point in time you do not understand myself or the
23 lawyers or Mr. Seleznev, please advise the Court. If
24 you need to switch interpreters, and you need to be
25 able to transition so there's no break in translation,

1 just let the Court know, and I'll be more than happy to
2 accommodate that request. The only thing I expect of
3 you is just to raise your hand to get my attention so I
4 can stop the questioning or examination of any
5 witnesses. Do both interpreters understand?

6 INTERPRETER: Yes, Your Honor.

7 THE COURT: Thank you. The purpose of this
8 hearing this morning is a Faretta hearing. And this is
9 a result of the defense request for a hearing. Now,
10 whether the defendant wrote the brief or not, I want to
11 make sure he understands that the purpose of a Faretta
12 hearing is for the Court to conduct a hearing to assess
13 whether or not the defendant's desire to waive counsel
14 is knowing, intelligent, and voluntarily made.

15 So my first question is of the defendant's
16 lawyers. Is there a need for the Court to go forward
17 with the Faretta hearing? The last time you were
18 before the Court, there was some expression by counsel
19 that may or may not be the case. So before I start
20 going down that road, I want to hear from counsel
21 exactly what your understanding of why we're here this
22 morning and what's going to take place.

23 I'm not sure which one wants to speak.

24 MR. CALFO: Yes, Your Honor.

25 MS. OSTROVSKY: Thank you, Your Honor. Would

1 you like me to take the podium?

2 THE COURT: Yes.

3 MS. OSTROVSKY: Your Honor, Mr. Seleznev does
4 want to go forward with the Faretta hearing this
5 morning. And we just would like to make clear to the
6 Court that our recommendation to Mr. Seleznev is that
7 he allow us to represent him for all phases of this
8 pretrial and trial proceedings, but he's resolute in
9 his desire to be able to file his own pretrial motions.

10 We have talked with him about what is going
11 to happen at today's hearing. And we believe that he
12 is prepared to go forward with the colloquy with the
13 Court that's required by the Supreme Court case.

14 THE COURT: Okay. Thank you. All right.
15 Mr. Seleznev, I want to explain to you how the
16 proceedings is going to take place. First, I'm going
17 to place you under oath, and I'm going to ask you a
18 series of questions. Once I conduct my examination of
19 you, asking you questions, then I'm going to ask your
20 lawyers questions to make sure they have expressed
21 their positions.

22 I only have a limited amount of information
23 from your lawyers right now, and I'll ask them more
24 detailed questions. The Court perceives the Government
25 as mere observers for the most part. I'll ask them a

1 few questions, but the focus of my concern this morning
2 is to be certain, if you do wish to represent yourself
3 for pretrial motions, that you're doing so knowingly
4 and voluntarily.

5 Sir, first I'll have you placed under oath.
6 So please rise and raise your right hand so you can be
7 placed under oath.

8 (The Defendant is sworn under oath by the
9 Clerk.)

10 THE DEFENDANT: I swear.

11 THE COURT: You may be seated.

12 Mr. Seleznev, you have now been placed under
13 oath. It's very important that you provide truthful
14 answers to all the questions that are asked of you by
15 myself. If you make a false statement to the Court or
16 if you lie or you commit perjury, that can result in a
17 separate criminal charge against you. Do you
18 understand that, sir?

19 THE DEFENDANT: I understand.

20 THE COURT: And I want to make sure that if
21 you don't understand the question, you'll ask me to
22 clarify by way of repeating or asking you the question
23 in a different way. Can we have that understanding?

24 THE DEFENDANT: I understand.

25 THE COURT: If you don't understand any of my

1 questions, or if you need to consult with your lawyers
2 before you answer any question, I want you to know that
3 you do have the right to interrupt the proceeding, and
4 you can consult with your lawyers. And please advise
5 the Court if you need to talk with your lawyers. I
6 don't want you to answer any questions that you don't
7 feel comfortable answering without the benefit of your
8 lawyers. Do you understand that, sir?

9 THE DEFENDANT: I understand.

10 THE COURT: And I want counsel to know, if I
11 ask any question that you believe is inappropriate or
12 that may infringe upon your defendant -- or your
13 client's constitutional rights or any privileged
14 communications between you and your client, that you
15 are certainly free to consult with your client and
16 direct him whichever way you believe appropriate in
17 responding to questions posed by the Court. I don't
18 want there to be any question that there's a waiver of
19 attorney-client communications or any infringement of
20 the constitutional rights that the defendant has
21 because the Court is conducting the Faretta hearing.

22 MS. OSTROVSKY: Thank you, Your Honor.

23 THE COURT: It's my understanding that the
24 Government does not oppose the defendant's request, but
25 the only concern the Government has is for the Court to

1 conduct a Faretta-type hearing. Is that the
2 Government's position?

3 MR. BARBOSA: That's correct, Your Honor.
4 This is in the Court's discretion. While there may be
5 some reasons that you would be able to deny the
6 request, we believe the Court has discretion to grant
7 it if he complies in the Faretta hearing.

8 THE COURT: Mr. Seleznev, I want to make sure
9 also that you understand we're not here to discuss the
10 facts of the case. I don't want you to make any
11 admissions about the facts of this case or any
12 admissions about what your strategy of defense is or
13 any positions about your defense or any issues about
14 what you believe are the facts in this case. That's
15 not why we're here. We're only here to decide whether
16 or not you will be able to represent yourself in
17 pretrial proceedings. Do you understand that, sir?

18 THE DEFENDANT: I understand.

19 THE COURT: Now, it's my understanding that
20 you wish to represent yourself for pretrial proceedings
21 only, but that your lawyers would conduct the trial.
22 Is that correct?

23 THE DEFENDANT: It's not exactly.

24 THE COURT: You explain to me exactly what
25 you're asking that you be permitted to do for purposes

1 of pretrial proceedings.

2 THE DEFENDANT: What I'm asking for is
3 permission to file pretrial motions myself, but that my
4 attorneys also be allowed to file pretrial motions, and
5 that I will go to hearings with them as well.

6 THE COURT: Now, when you say you file
7 pretrial motions, and they file pretrial motions, can
8 you define exactly the motions that you believe that
9 you would be filing separate from the motions that you
10 think that your lawyers might be filing?

11 MS. OSTROVSKY: Your Honor, can we consult
12 with our client for a moment?

13 THE COURT: Certainly, absolutely.

14 THE DEFENDANT: Your Honor, I can't say
15 precisely which motions I would be bringing, but I
16 believe that there are some motions that my attorneys
17 wouldn't bring and that I would like to be able to
18 bring those motions myself.

19 THE COURT: Now, you understand, sir, that
20 the Court is not going to permit you to file a set of
21 motions on the same topic that your lawyers had filed a
22 motion. Do you understand that, sir?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: Now, sir, let me get a little bit
25 more understanding from you about you as an individual.

1 How old are you, sir?

2 THE DEFENDANT: Thirty-one.

3 THE COURT: And how much -- how far did you
4 go in school?

5 THE DEFENDANT: Eleven grades.

6 THE COURT: And have you ever taken any type
7 of law courses or studied law in any set of
8 circumstances?

9 THE DEFENDANT: No, but I've had a sufficient
10 amount of time here to study it in jail.

11 THE COURT: And when you say study it in
12 jail, what have you used to help you have a better
13 understanding of what the United States laws are?

14 THE DEFENDANT: There are computers in the
15 law library, and they have everything there.

16 THE COURT: So give me examples of what types
17 of things you have read to help prepare you to be able
18 to cover filing motions.

19 THE DEFENDANT: Well, for example, I want to
20 file a motion to strike some of the counts in my
21 charges, because I think that some of them are
22 repetitive.

23 THE COURT: And you learned that as a result
24 of what you read on the computers?

25 THE DEFENDANT: Yes.

1 THE COURT: And have you ever represented
2 yourself in any type of legal proceeding?

3 THE DEFENDANT: No.

4 THE COURT: And, sir, have you ever had any
5 employment in the past where you were required to write
6 things or prepare writings or file documents?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: And have you taken any types of
9 drugs, medicine, pills, or drunk any alcoholic
10 beverages in the past 24 hours?

11 THE DEFENDANT: I take medication for
12 epilepsy.

13 THE COURT: Is there anything about that
14 medication that's affecting you now in terms of your
15 ability to understand anything that's taken place so
16 far this morning?

17 THE DEFENDANT: I don't think so.

18 THE COURT: In the last ten years, have you
19 been treated by any person medically or professionally
20 trained to address questions of mental competence,
21 mental illness, or mental infirmity of any type?

22 THE DEFENDANT: No.

23 THE COURT: And, sir, page 3 of your motion
24 that you filed before this Court -- do you have a copy
25 of that document, sir?

1 THE DEFENDANT: Yes, I see it.

2 THE COURT: Now, if you look at page 3,
3 beginning on line 15, that reads that, "Defendant,
4 Roman Seleznev, had been informed and believes hereon
5 that public defenders in American courts regularly do
6 the following." Then it goes on to list five different
7 things. Are you telling the Court that you believe
8 your current lawyers are engaged in that type of
9 activity?

10 THE DEFENDANT: The first and second.

11 THE COURT: Is there some concern that
12 counsel had?

13 MS. OSTROVSKY: I was just hoping to speak
14 with my client before he --

15 THE COURT: You want to consult with him now,
16 counsel? Is there something further, counsel? Can I
17 continue with the examination?

18 MS. OSTROVSKY: No. I apologize, Your Honor.

19 THE COURT: Counsel, there's no need to
20 apologize. You're doing what you're supposed to do,
21 which is to represent your client, and if at any point
22 in time, you need to consult with your client, you can
23 put your hand on his arm to let him know not to answer
24 the question. So if that's a measure of communication
25 you wish to utilize, feel free to do that. I don't

1 want him to feel he's pressured or under duress. I
2 want to make sure he's fully represented by his two
3 lawyers to help him get through this part of the
4 process.

5 MS. OSTROVSKY: Thank you.

6 THE COURT: So, Mr. Seleznev, that same page
7 says that you have been informed and you believe that
8 public defenders regularly do the following. By whom
9 have you been informed and upon what is the basis for
10 your belief that those things take place with public
11 defenders?

12 THE DEFENDANT: Well, the first two points I
13 had asked my attorneys to adopt my pretrial motions.
14 And they refused, because they told me that my motions
15 were pointless.

16 THE COURT: Now, sir, you understand that
17 your lawyers are highly experienced, and both your
18 lawyers are well respected, and both of them are very
19 capable lawyers with years of experience representing
20 criminal defendants. You understand that by your
21 desire to bring certain types of motions, you're
22 putting that experience at risk, because you're
23 counting on your skill set and your ability to
24 represent yourself. Do you understand that, sir?

25 THE DEFENDANT: Yes, I understand.

1 THE COURT: You also understand that in our
2 system of justice, you do have a right as a defendant,
3 constitutional right to counsel, even if you can't
4 afford an attorney. So, in other words, the right to
5 have counsel means full representation for the pretrial
6 motions, all pretrial hearings, and for purposes of
7 trial and sentencing. Do you understand that, sir?

8 THE DEFENDANT: Yes, I understand.

9 THE COURT: You also understand that your
10 current attorneys are being provided to you at no
11 expense? In other words, you don't have to pay for
12 these lawyers. Do you understand that, sir?

13 THE DEFENDANT: Yes. Thank you.

14 THE COURT: And my understanding is your
15 position is that you want them only to represent you on
16 matters other than the things that you specifically
17 want to represent yourself, and that's just pretrial,
18 is that correct?

19 THE DEFENDANT: I didn't understand that.

20 THE COURT: I just want to make sure that you
21 understand that your lawyers represent you for all
22 aspects of your prosecution and all aspects of your
23 defense. Let me make sure you understand it this way,
24 sir. Your lawyers represent you. You understand that,
25 correct?

1 THE DEFENDANT: Yes.

2 THE COURT: And I want to make sure you
3 understand that when I tell you that your lawyers
4 represent you at no expense, that covers everything,
5 not just bits and pieces of your defense. Do you
6 understand that?

7 THE DEFENDANT: Yes, I understand.

8 THE COURT: And you also understand, sir,
9 that if at some point in time you get to the point
10 where you say, Judge, I don't want to do this anymore,
11 I want to have my lawyers represent me for all pretrial
12 motions, that you can change your mind. Do you
13 understand that?

14 THE DEFENDANT: I understand.

15 THE COURT: Is there any desire at this point
16 right now to say, no, Judge, I change my mind, I do
17 want them to represent me in all phases of the pretrial
18 process?

19 THE DEFENDANT: I just want to clarify that I
20 would like to be able to file additional pretrial
21 motions, but that my attorneys also be able to file
22 their own pretrial motions as well.

23 THE COURT: Now, when you say additional
24 motions, I want to make sure I understand exactly what
25 role that you will play. So can you tell me what you

1 have in mind by way of how that process would work with
2 you filing additional motions? So in other words, are
3 you going to write those motions?

4 THE DEFENDANT: Yes, I will write them
5 myself.

6 THE COURT: You're going to write them
7 yourself, is that correct?

8 THE DEFENDANT: I'm going to be getting
9 assistance from a person or an assistant on the side,
10 but I will be filing them myself.

11 THE COURT: Now, is the person that's
12 providing advice, is that person an additional lawyer?

13 THE DEFENDANT: I don't think so.

14 THE COURT: Now, I want to just make sure you
15 understand, sir, and I want to put your lawyers on
16 notice too, Mr. Seleznev, that in getting the
17 assistance of other persons, you filed an affidavit, a
18 declaration with this Court where you represented to
19 the Court that you have certain funds or no funds to
20 assist in your defense and also the amount of money
21 that you currently have access to. And I don't want
22 you to make any misrepresentations to this Court if
23 you're hiring other lawyers to assist you in preparing
24 these motions. So you may want to talk to your lawyers
25 about that, but I want to make sure I bring this to

1 your attention before you start answering questions
2 down that road.

3 You may -- you want to talk to your lawyers?

4 THE DEFENDANT: No.

5 THE COURT: Okay.

6 THE DEFENDANT: It's not attorneys, and I'm
7 not going to pay him. It's just assistance.

8 THE COURT: Now, when you say assistance, are
9 they going to write the motions for you?

10 THE DEFENDANT: They're going to help, and
11 they would be writing some parts themselves, and then
12 other parts, I would be writing.

13 THE COURT: Let me ask you this, sir. In the
14 document that was filed with this Court, specifically
15 the motion requesting bifurcated representation, who
16 prepared that document?

17 THE DEFENDANT: That in fact was prepared by
18 the -- that assistant, but at my -- it was my idea.

19 THE COURT: Now, one of the things that's
20 been presented to this Court are a series of
21 transcripts regarding communications that you have had
22 with other individuals, and that includes Henry Fisher.
23 It also includes Valerie Seleznev, your father, and
24 also includes statements and communications about or
25 with a person by the name of Kyle Green.

1 One of the things I want to make sure is, are
2 any of these people forcing you to move this Court for
3 the opportunity to represent yourself?

4 THE DEFENDANT: No.

5 THE COURT: Have these individuals made any
6 promises that have led you to make the decision that
7 hybrid representation is the wiser course of action?

8 THE DEFENDANT: No. There were no promises,
9 only advice.

10 THE COURT: Are they forcing you to make this
11 decision?

12 THE DEFENDANT: No.

13 THE COURT: You understand, sir, that
14 oftentimes individuals will give you advice that aren't
15 your lawyers and suggest that you take certain
16 approaches with the Court, and because those
17 individuals are not trained in the law, particularly in
18 the laws of the United States, that they could be
19 giving you bad advice, and that bad advice could
20 increase the likelihood or the probability of your
21 being found guilty?

22 THE DEFENDANT: I'm not going to be going to
23 trial with them.

24 THE COURT: I understand that, but I want you
25 to understand that the pretrial motions that you might

1 be making before this Court could possibly put you in a
2 position where you are either providing information or
3 volunteering information or compromising the defenses
4 that your lawyers wish to make in advance at trial.

5 THE DEFENDANT: I understand.

6 THE COURT: Now, you also understand that
7 those communications -- and I've listed three
8 individuals, but the communications you have had with
9 them and other people who are not your lawyers are not
10 private or privileged communications. You understand
11 that, sir?

12 THE DEFENDANT: I understand, yes.

13 THE COURT: And you also understand that your
14 communications on the telephone from the detention
15 center are not private communications or privileged
16 communications unless those communications are
17 specifically with your lawyers? Do you understand
18 that, sir?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: So if you're discussing strategy,
21 if you're discussing what you're going to file, if
22 you're discussing how you wish to approach your
23 motions, that information may be recorded, and the
24 government would have access to that information. Do
25 you understand that, sir?

1 THE DEFENDANT: I do understand that now.

2 THE COURT: And you understand that if your
3 lawyers were to represent you on those same motions,
4 all of those communications on the telephone from the
5 detention center would be privileged and protected, and
6 the Government would be precluded from having any
7 access to those conversations, and they would not be
8 permitted to listen to those conversations? Do you
9 understand that, sir?

10 THE DEFENDANT: Yes, I understand.

11 THE COURT: Now, it's my understanding that
12 the individuals, at least the ones I've listed so far,
13 are not lawyers. They don't necessarily have training
14 in law, and you would be relying upon them to assist
15 you in preparing your motions. Is that what you're
16 telling the Court?

17 THE DEFENDANT: Yes.

18 THE COURT: Have they made any threats or
19 promises or said anything or done to you or threatened
20 action against you in the future if you don't ask this
21 Court to be able to represent yourself on certain
22 motions?

23 THE DEFENDANT: No, Your Honor.

24 INTERPRETER: Your Honor, may the interpreter
25 switch?

1 THE COURT: Certainly.

2 Mr. Seleznev, you understand that there's a
3 document on file called a protective order regarding
4 discovery. Is that your understanding, sir?

5 THE DEFENDANT: Yes, I understand.

6 THE COURT: And have you read the specifics
7 of that order?

8 THE DEFENDANT: Yes.

9 THE COURT: And you understand that there's
10 certain restrictions in that order?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: And you understand that that
13 protective order as it currently reads would prohibit
14 you from consulting with other people. In other words,
15 you can't share the discovery that would be or has been
16 provided to you from the Government. Do you understand
17 that?

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: And you also understand that in
20 preparing any motion, you couldn't provide copies, you
21 couldn't read, and you couldn't divulge any information
22 that you learned to these other individuals. I'm
23 specifically talking about Mr. Henry Fisher, your
24 father, Kyle Green, or any other person who is not your
25 lawyer. Do you understand that, sir?

1 THE DEFENDANT: Yes, I understand.

2 THE COURT: So I want to make sure you
3 understand that if you're writing your own motions or
4 drafting your own motions, you can't consult with this
5 other person that you've represented would be assisting
6 you in preparing the motions as far as referring to any
7 discovery that's been provided by the Government. Do
8 you understand that, sir?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: And I want to make sure you
11 understand what discovery means. Discovery means that
12 during the course of preparation for the trial, the
13 Government has certain obligations to provide to you
14 and your lawyers, and certainly your lawyers, access to
15 police reports, investigative reports, certain
16 statements by witnesses, and other type of information
17 as required by the Criminal Rules of Procedure. You
18 understand that that type of discovery and the other
19 things within the rules you can't disclose to anyone
20 else other than your lawyers. Do you understand that,
21 sir?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: And, sir, if you file a motion
24 before this Court, do you understand that if you are
25 going to take responsibility for that motion, then you

1 would have to be making the oral argument to the Court
2 on that motion? Do you understand that?

3 THE DEFENDANT: Yes, but I would like to ask
4 the Court to make sure that my attorneys also -- also
5 defend my position.

6 THE COURT: I want to make sure you
7 understand, sir, if you're saying, I want to represent
8 myself on certain motions --

9 THE DEFENDANT: No. I said -- I said that I
10 wanted to file motions.

11 THE COURT: I understand that, but if you
12 want to file motions -- I want to make sure I
13 understand. You want to file a motion, but you want
14 your lawyers to argue the motion?

15 THE DEFENDANT: Yes, that is my request.

16 THE COURT: You understand, sir, the
17 difficulty -- the difficult position you put your
18 lawyer in is that if you draft a motion, if you prepare
19 the writing for that motion, and it's your belief in
20 that motion, if your lawyers don't believe that that
21 motion has merit, and they haven't drafted the motion,
22 and they haven't done any research about the particular
23 motion you filed, you put them in a very awkward
24 position of being unprepared to argue that type of
25 motion. Do you understand that, sir?

1 THE DEFENDANT: Yes, I understand. And I
2 already talked about that. I talked with my attorney.

3 THE COURT: Let me ask counsel. Counsel, are
4 you prepared to accept this approach where your client
5 would write a motion or draft a motion that you had no
6 hand in crafting, and that you would come to court and
7 argue that motion? Is that your understanding of what
8 you're prepared to do?

9 MR. CALFO: No. No, we won't.

10 THE COURT: Okay. And, Mr. Seleznev, if
11 there are witnesses that need to be called, if there
12 are witnesses that need to be called because of the
13 motion that you filed, you would be expected to ask
14 those witnesses questions and conduct the direct and
15 cross-examination of those witnesses. Do you
16 understand that, sir? Is there an answer you wish to
17 provide, sir?

18 MR. CALFO: I'm not sure what the question
19 was.

20 THE COURT: The question -- it goes back to
21 whether or not he understands if there's a motion that
22 he files that requires argument or the presentation of
23 evidence by way of witnesses, that he would be expected
24 to examine those witnesses and make the argument to the
25 Court. I just want to make sure he understands that's

1 what he's asking the Court to do. I want to make sure
2 that's his understanding.

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: Now, one of the motions that you
5 filed with the Court, which was stricken, was a motion
6 to dismiss. Now, if that motion is advanced by you,
7 the Court's not going to let your lawyers file the same
8 motion separately from you. Do you understand that,
9 sir?

10 THE DEFENDANT: Yes, I understand.

11 THE COURT: So you understand that if the
12 Court denies that motion, your lawyers don't get a
13 second chance to ask the Court based upon their
14 briefing and their materials that they would provide to
15 the Court for that same motion to be granted. I'm
16 talking about a motion to dismiss.

17 THE DEFENDANT: Yes, I understand.

18 THE COURT: And, counsel for the defendant,
19 you understand that as well?

20 MR. CALFO: Yes, Your Honor.

21 THE COURT: Okay. I just wanted to make sure
22 if he files a motion to dismiss the indictment that
23 we're not going to be doing this twice and repeating
24 the efforts of the defendant twice. If he files a
25 motion, that's the opportunity to bring that type of

1 motion before the Court. So we're not going to give
2 two separate hearings, two separate opportunities.

3 MR. CALFO: I'm assuming that means on the
4 subject matter basically.

5 THE COURT: On that subject matter.

6 MR. CALFO: Yes.

7 MR. BARBOSA: Your Honor, we're beginning to
8 have some concerns about how we're going to distinguish
9 which subject matter. I mean, how different do these
10 motions have to be? This is -- seems to be going
11 astray from a motion to represent himself pretrial to a
12 motion to act as co-counsel and possibly submit
13 inconsistent positions or just vaguely different
14 positions. And how can we distinguish between what
15 motions Mr. Seleznev is allowed to file versus what
16 motions counsel is allowed to file? If it's all
17 motions to dismiss will be Mr. Seleznev, and all
18 motions to suppress will be counsel, that could be
19 understandable. But if a slight variation in the
20 argument regarding the motion to dismiss allows counsel
21 to file the same thing, how are we going to distinguish
22 between these things? And that's causing us some
23 heartburn.

24 THE COURT: Counsel, heartburn will be
25 eliminated because the Court plans on getting to the

1 subject matter. Not right now. And I'm going to
2 require the defense identify by way of a case schedule,
3 or added to the case schedule, all the motions that
4 defense counsel will be responsible for and all the
5 motions that the defendant specifically will be
6 responsible for.

7 As you recall early in the proceeding, I
8 asked the defendant, and he said he didn't know right
9 now. That's not a sufficient answer for this Court to
10 make a final determination. When we finish this
11 proceeding, if the Court grants the defendant's
12 request, the clear directive will be -- is for the
13 defendant, his lawyers, and government counsel to get
14 together and to identify between today's date and the
15 beginning of trial any and all motions that the parties
16 plan on filing with this Court. I will also expect a
17 submission to this Court of deadlines for each of those
18 motions.

19 So that will be clear for the defendant, if I
20 grant his request, what he's expected to do, what his
21 lawyers are expected to do, and the deadlines for each
22 of those motions. There will be no equivocation or
23 question about who's doing what by the time we finish
24 this process. Does that answer your question, counsel?

25 MR. BARBOSA: I think for now, yes, Your

1 Honor.

2 THE COURT: Okay. All right. Mr. Seleznev,
3 let's get back to you. So you do understand that if
4 you make a motion that you would be arguing the motion
5 that you filed. Do you understand that, sir? In other
6 words, you have to stand at the lectern or sit at
7 counsel table and make the argument to the Court to
8 convince the Court that I should grant your motion.
9 That would be your responsibility on the things that
10 you filed. Do you understand that, sir?

11 THE DEFENDANT: I understand. I understand.
12 But one more time, I would like to request that my
13 attorneys help me.

14 THE COURT: Sir, if you're going to represent
15 yourself -- that's the whole purpose of a Faretta
16 hearing, to make sure you understand this is knowing
17 and voluntarily. If I'm going to let you waive your
18 right to have counsel, if you're going to represent
19 yourself on certain issues, that's your responsibility.
20 Your lawyers just told the Court that they're not going
21 to argue in court a motion that you drafted, that you
22 prepared, that they didn't have any hand in assisting.
23 So I want to make sure that that's your understanding
24 as you go into this hybrid approach to representing
25 yourself.

1 THE DEFENDANT: I understand. Thank you.

2 THE COURT: All right. Now, you also
3 understand, sir, that we have what are called motions
4 practice. We also have local rules. We also have
5 Federal Rules of Criminal Procedure. And many of the
6 types of motions that you may wish to file will have
7 certain deadlines. You'll be expected to be fully
8 responsible for meeting all those deadlines. Do you
9 understand, sir?

10 THE DEFENDANT: Yes, I understand. And I
11 would like to request to extend the deadline for motion
12 number one if the Court will allow it.

13 THE COURT: We'll get to that, an extension
14 of the motion deadline, a little bit later. Right now,
15 I want to make sure you understand what the process is
16 going to be.

17 THE DEFENDANT: Okay.

18 THE COURT: So, again, you understand that
19 you'll be required to proceed under the Federal Rules
20 of Criminal Procedure and any local rules of this
21 district court. Do you understand that, sir?

22 THE DEFENDANT: Yes, I understand.

23 THE COURT: And you also understand your
24 lawyers are trained in the law, and they possess
25 expertise in criminal law and criminal procedure. As

1 lawyers, they will have much easier access to
2 investigators, expert witnesses, law books, and other
3 resources. Because you are in custody, your access
4 will not be the same as theirs.

5 Are you prepared to represent yourself on the
6 motions that you wish to bring, recognizing that you
7 would be foregoing the opportunity to have that quality
8 of representation covering you on those motions?

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: Make sure you also understand,
11 sir, in the American system, if a defendant is found
12 guilty, they frequently appeal their convictions. Now,
13 a common claim by defendants is ineffective assistance
14 of counsel. In other words, they're challenging the
15 type of representation they received from their
16 lawyers. If you're representing yourself on the
17 motions that you filed, you're seriously compromising
18 that option. In other words, you can't claim your
19 lawyers were ineffective on the motions you raised,
20 because you chose to represent yourself and not have
21 your lawyers represent you. Do you understand that,
22 sir?

23 THE DEFENDANT: Yes, I understand.

24 THE COURT: Now, sir, I want you to
25 understand that this is a serious decision on your part

1 to decide to represent yourself, and I want to make
2 sure that you've thought long and hard about this
3 decision, and I want to make sure that you not be
4 influenced by other people's wishes and desires. You
5 tell me that you're not. My job as a trial judge is to
6 make sure you understand the rights that you have and
7 make sure you get a fair trial. I can't emphasize
8 enough the importance of having quality representation
9 during all phases of the trial, which includes pretrial
10 motions practice.

11 Now, the law in this country indicates that
12 you do have the right to represent yourself, if that's
13 your choice. But it's my responsibility to make sure
14 that you understand the enormity of the decision that
15 you're making by giving up the right to have counsel
16 represent you on every one of your motions. I also
17 want you to understand that, in my opinion, you would
18 be much better served to be defended by individuals who
19 are trained in law, particularly with the quality of
20 lawyers that you currently have.

21 I think it's unwise for you to try to
22 represent yourself on any motion. You're not familiar
23 with the law. You're not familiar with court
24 procedures. You're not familiar with the Rules of
25 Evidence. And the most that you could tell me, since

1 you have been in the detention center, you have been
2 able to go on the computer and look things up. Sir,
3 that's far short, far short of what's expected of an
4 individual to have an understanding of the criminal
5 process.

6 Your lawyers have gone through at least three
7 years of law school. They have been involved in
8 different types of employment to learn the tools of the
9 trade, to learn the process of criminal prosecutions
10 and criminal defense. And by representing yourself,
11 even on some of these motions, you're giving up all
12 that expertise and that quality of representation. Do
13 you understand that, sir?

14 THE DEFENDANT: I'm not refusing my defense.
15 I'm just -- I would like to have the ability to file
16 additional motions on my own, the motions that they may
17 not want to file themselves.

18 THE COURT: Is there something specific that
19 caused you to have this idea in your mind that you want
20 to file your own motions separate and apart from your
21 lawyers?

22 THE DEFENDANT: Yes. I have three motions
23 that my attorneys did not want to file, even though
24 they themselves admitted that one of those motions
25 could have been filed or could not have been filed.

1 THE COURT: So is your request for you to
2 represent yourself on certain motions limited to just
3 three motions?

4 THE DEFENDANT: No. There will be additional
5 motions.

6 THE COURT: Now, you understand, sir, that if
7 you file a motion on a particular subject matter -- and
8 Mr. Calfo was trying to narrow this down too. If you
9 file a motion on a specific subject matter, that you're
10 waiving the right to have your lawyers represent or
11 file a motion on that same topic or subject matter? Do
12 you understand that, sir?

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: Now, you understand that if that
15 subject matter is -- one that you've argued is
16 unsuccessful, that could affect your lawyers' ability
17 when they represent you in the actual trial. Do you
18 understand that, sir?

19 THE DEFENDANT: Yes.

20 THE COURT: So I want to make sure that you
21 understand, sir, if you file a motion to exclude
22 certain types of evidence, for example, and you argue
23 that motion, and your lawyers don't have any hand in
24 drafting or arguing that motion, and if you lose that
25 argument, that evidence is admissible. That could

1 compromise your lawyers' ability to represent you in
2 the way that they may have desired to represent you at
3 trial. Do you understand that, sir?

4 THE DEFENDANT: Yes, I understand.

5 THE COURT: Now, have you discussed with your
6 lawyers the advantages and disadvantages of your hybrid
7 approach to representing yourself during the pretrial
8 motions or pretrial proceedings?

9 THE DEFENDANT: Yes, we discussed it.

10 THE COURT: Do you feel like you need any
11 additional time to talk to your lawyers about the
12 position you have taken at this time?

13 THE DEFENDANT: No, we decided it all.

14 THE COURT: Sir, do you wish to waive your
15 right to have your lawyers represent you on the motions
16 you wish to file with this Court?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you have any reservations
19 about that decision?

20 THE DEFENDANT: No, I don't.

21 THE COURT: Now, sir, you heard me explain to
22 the Government, at some point in time, I'm going to
23 require you, your lawyers, and the Government to
24 identify for the Court every motion, the specifics of
25 the motions that you plan on filing that you're going

1 to represent yourself, that your lawyers are going to
2 represent you, and any motions that the Government
3 contemplates on asking. I'm going to require that you
4 provide that to the Court, so I have a clear
5 understanding of who's going to be doing what for
6 pretrial motions. Are you prepared to do that, sir?

7 THE DEFENDANT: Yes, I'll try.

8 THE COURT: Well, sir, it's got to be more
9 than try, because the Court is going to require that
10 you commit to identifying the motions that you're going
11 to file pleadings on, file with this Court, and argue
12 with this Court and separate those from the ones your
13 lawyers are going to cover, because I don't want to
14 have to revisit this topic weeks or months down the
15 road where there's some finger pointing with you
16 saying, my lawyers are going to argue that, and your
17 lawyers are saying, no, Mr. Seleznev is covering that.
18 We're going to have a clear line of distinction, if I
19 grant your motion, of what you're doing and what your
20 lawyers are going to be doing. I'm asking, can you
21 commit to that process?

22 THE DEFENDANT: Yes, I understand. I am
23 ready.

24 THE COURT: All right. I want to ask the
25 questions of counsel. I think you've made

1 representations to this effect, but I want to make sure
2 I'm clear in determining whether the accused has made a
3 knowing, voluntary, and intelligent waiver and is
4 competent to waive. So my questions to you are as
5 follows: First, have you discussed with Mr. Seleznev
6 the advantages and disadvantages of representing
7 himself on the motions he wishes to file with this
8 Court?

9 MS. OSTROVSKY: Your Honor, I have discussed
10 with Mr. Seleznev the advantages and disadvantages of
11 his pursuing pretrial motions in general and the
12 advantages and disadvantages of the hybrid approach
13 that he's asked for. I have not discussed with him the
14 advantages and disadvantages of the specific motions
15 that he intends to file.

16 THE COURT: You know the motions he filed
17 with the Court, the Court struck?

18 MS. OSTROVSKY: Yes, Your Honor.

19 THE COURT: I don't need to go back and
20 revisit those, which include the motion to dismiss the
21 indictment, the motion to dismiss for prosecutorial
22 misconduct, and I believe there's one -- the motion to
23 dismiss Counts 21, 29, and 30 through 38. You're aware
24 of those motions, correct, counsel?

25 MS. OSTROVSKY: I am, Your Honor, and I have

1 discussed those motions with my client.

2 THE COURT: All right. Do you have any doubt
3 that your client is making a knowing, intelligent, and
4 voluntary waiver of his right to have counsel represent
5 him on the motions that he wishes to file with this
6 Court?

7 MS. OSTROVSKY: I don't have a doubt that
8 he's making a knowing and voluntary and unequivocal
9 right of his right to counsel on those specific motions
10 only.

11 THE COURT: When you say those specific
12 motions, we're talking about the ones I just
13 identified?

14 MS. OSTROVSKY: Those three and additional
15 motions that he wishes to file.

16 THE COURT: And you have had conversations
17 with your client about those?

18 MS. OSTROVSKY: Only generally, Your Honor,
19 not about them in any sort of specificity.

20 THE COURT: And, again, you have no
21 reservation that that's a knowing, intelligent,
22 unequivocal, and voluntary waiver, correct.

23 MS. OSTROVSKY: I believe that Mr. Seleznev
24 understands what he's asking for, and I believe his
25 request is knowing and voluntary.

1 THE COURT: Has anything come to your
2 attention suggesting that Mr. Seleznev may not be
3 competent to waive his right to counsel for those
4 specific motions or any other motions that he plans on
5 filing?

6 MS. OSTROVSKY: No.

7 THE COURT: You understand that if your
8 client represents himself, the Court will not allow him
9 to file a motion and pleading and then allow counsel to
10 double down and file separate pleadings, thereby
11 duplicating arguments and wasting court resources.

12 MS. OSTROVSKY: I understand.

13 THE COURT: Can you explain exactly how you
14 envision your understanding of what the defendant is
15 seeking or has in mind by way of hybrid representation
16 on pro se motions? In other words, what will you be
17 doing, and what will he be doing? I'm not talking
18 about the specific motions, because he may not have
19 identified the specifics, but I wanted to make sure
20 that you can share with the Court what you believe he
21 is communicating and your understanding of how that
22 process would work.

23 MS. OSTROVSKY: I'm not sure I understand
24 your question, Your Honor.

25 THE COURT: In other words, I'm trying to get

1 to the essence of what it is that this side of the
2 bench is going to be doing with this hybrid approach.
3 In other words, what are the clear lines of authority
4 and distinction between what you will be doing, what
5 you will be covering, and what Mr. Seleznev will be
6 covering and how he will be representing himself?
7 Again, I'm not trying to invade your communications,
8 but I want to have a clear understanding from the mouth
9 of his lawyer as to what you're going to be doing, what
10 he's doing to be doing, and how you're going to
11 approach it.

12 MS. OSTROVSKY: My understanding, Your Honor,
13 after today, we will need to consult with our client
14 and identify the motions that we intend to bring, and
15 he will identify the motions that he intends to bring.
16 And we will make sure that there is no duplication in
17 our efforts. And then I will negotiate with the
18 Government for a schedule for each of those specific
19 motions.

20 THE COURT: And you understand, based upon
21 communications we have had already, that the case
22 scheduling order is going to be modified. Do you
23 understand that?

24 MS. OSTROVSKY: I understand that.

25 THE COURT: All right. And the Court's going

1 to review and require the parties to identify all the
2 motions that you're going to file. And unless there's
3 something significantly different that changes in terms
4 as we're going forward, that's going to be the
5 guidepost that we're going to use for the balance of
6 trial preparation. Is that your understanding?

7 MS. OSTROVSKY: It is.

8 THE COURT: I want to make sure you
9 understand, if your client files a motion, that he
10 argues that motion; that if there's a witness required
11 for that motion, he's going to examine those witnesses.
12 You will not be conducting the examination, and you
13 will not be arguing on behalf of your client. Is that
14 your understanding as well?

15 MS. OSTROVSKY: It is.

16 THE COURT: Any further representation? Just
17 one second.

18 INTERPRETER: Your Honor, may I request a
19 change of interpreters?

20 THE COURT: Certainly. Thank you.

21 I want the interpreters to know you're doing
22 a good job of getting the Court's attention.

23 All right. Counsel for the defense, do you
24 believe there's any additional questions or areas of
25 examination that the Court has not conducted that would

1 be necessary for the Court to accomplish the objectives
2 of what's expected for a Faretta-type hearing?

3 MS. OSTROVSKY: I don't believe so, Your
4 Honor.

5 THE COURT: Counsel for the Government, same
6 question to you.

7 MR. BARBOSA: I don't have any further
8 questions.

9 THE COURT: All right then. Based upon the
10 totality of what's been provided to this Court, the
11 Court had tried to explain numerous ways for the
12 defendant what the expectations would be, his
13 responsibilities, and the risk that he takes by filing
14 motions that he believes should be filed with this
15 Court. Based upon the answers he's provided, based
16 upon the representations of counsel, the Court is
17 satisfied that his waiver is knowing and intelligently
18 and voluntarily made. There's been no provocation from
19 the defendant. The Court has not been presented with
20 anything that would suggest to the Court that the
21 defendant is not competent. The Court is satisfied
22 that if he wishes to file separate motions from those
23 filed by his lawyers, that he will be permitted to do
24 so. I believe the Court has satisfied all the
25 requirements and expectations of the Faretta hearing,

1 and the defendant will be permitted to file these
2 motions with the understandings that have been provided
3 and communicated specifically to the defendant.

4 Now, what I'm going to require is that two
5 things need to take place. One is the case schedule we
6 currently have needs to be modified. We're not going
7 to modify it right now. What we will do, I'm going to
8 set a date certain. I will expect counsel for the
9 Government and counsel for the defendant to get
10 together and identify the motions that will be filed
11 between today's date and whatever date that we schedule
12 or suggest to this Court for motions to be heard,
13 deadlines for motions, and argument to take place, and
14 if any witnesses have to appear to testify. I want to
15 make sure that if we need to have witnesses come that
16 are from outside this jurisdiction, that we have more
17 than ample time for those witnesses to appear and for
18 them to make travel arrangements.

19 Again, I'm not going to put my hand in at
20 this time in crafting what that's going to look like,
21 but it will be the Court's expectation that the parties
22 meet and confer and come back with that recommendation.

23 I want to make sure that Mr. Seleznev
24 understands that the motions that he identifies in that
25 order must be clear and specific that it's the

1 defendant himself who will be filing, meeting
2 deadlines, and preparing whatever's necessary for that
3 motion to be advanced for the Court's consideration.
4 The Court will not give advice to the defendant during
5 the course of that process. That's improper. The
6 defendant does have lawyers to assist him throughout
7 the balance of these proceedings, but the Court does
8 have an expectation in that regard.

9 Also if the Court needs to modify the
10 protective order -- because at this point in time,
11 again, I don't know that that issue needs to be
12 revisited. There's very specific and precise language
13 in terms of whether disclosures are permitted in that
14 protective order. I don't see any reason to vary or
15 veer from the specifics of that order restricting
16 access to discovery to the defendant or his lawyers.
17 But I want to emphasize for the defendant while he's in
18 court that the defendant is not permitted to disclose,
19 share, or provide any information about what's
20 contained in that discovery to individuals that would
21 be in breach of that protective order, because if the
22 defendant does, there are consequences that can be
23 imposed by this Court. I want to make sure that the
24 defendant clearly understands that. I'm not suggesting
25 that you have to change the protective order. If that

1 topic needs to be revisited, we're going to set the
2 same deadline for that modification as we would for the
3 case scheduling order.

4 Let me hear from the parties in terms of how
5 much time you're going need to address the question of
6 getting back to this Court a reasonable case schedule
7 with deadlines. We'll set a formal hearing for you to
8 come to court if there's any issue of dispute with
9 regard to what needs to be set or scheduled, but I want
10 you to be able to provide something to this Court. If
11 I don't have any questions about that, you don't need
12 to have the hearing. If I do have questions, you will
13 be expected to be here.

14 Counsel, if you want to get together, we can
15 take a short recess now and give the Court a heads up
16 in 15 minutes what you believe will be reasonable and
17 necessary. So we'll take an early recess, give you 15
18 minutes or so, and I'll come back into court, and we'll
19 resolve our differences at that point.

20 We'll be in recess.

21 (Recess taken.)

22 THE COURT: Good morning again. Please be
23 seated.

24 Counsel, the ball is in your court.

25 MR. CALFO: Okay. Your Honor, I think what

1 we -- this is a complicated situation, as you might
2 imagine. It's not the usual thing. We don't have a
3 lot of experience doing this. In fact, this is the
4 first time this precise situation has come up in my
5 time as a defense lawyer. But I think what we can do
6 to push the ball forward for the Court, what we were
7 thinking, by November 9th, which is two weeks from now,
8 that Mr. Seleznev could identify the motions that he is
9 going to take responsibility for as to the pretrial
10 motions 1 deadline.

11 And I think that accomplishes what the Court
12 wants, because our representation is going to be that
13 we represent the defendant on everything except the
14 things he's going to file motions on. So, I mean, that
15 makes it really clear for everybody. We know what
16 we're going to do. He knows what his responsibility
17 is. And I think it's best -- and that's not only good
18 for the defense, but I think it's good for the Court's
19 interest and the prosecutor's interest, because it's
20 clear, because -- so if he could do that by
21 November 9th.

22 I don't think it's probably practical for us
23 to have Mr. Seleznev identify every motion he's going
24 to bring in the case in two weeks, because there are
25 two separate motions deadlines set. The first one is

1 for objections to the indictment and the like, and then
2 there's the motions deadline that's going to be after
3 consideration of discovery and the like. That motions
4 deadline, I believe, is in next January.

5 So what we're thinking, perhaps by the time
6 we submit a new proposed case schedule for the Court
7 with respect to these new motions and any other thing
8 we believe needs to be moved, we can come up with a
9 second date on which Mr. Seleznev will identify that
10 second round of motions that he will bring. And we
11 will take care of everything else as his defense
12 lawyers. So that's the sort of structure we were
13 thinking.

14 One thing I wanted the Court to know is that
15 Mr. Seleznev is -- we are taking responsibility for the
16 hearing on December 10th and 11th. And when I say me,
17 I mean Ms. Ostrovsky and I. That's not in
18 Mr. Seleznev's motion. We're handling that motion.
19 We're handing the hearing. We will take responsibility
20 for the witnesses and so forth.

21 THE COURT: Just be clear, your client's not
22 filing any motion that's collateral or connected to the
23 motions that we're going to hear on December 10 and 11,
24 is that correct?

25 MR. CALFO: That's my understanding, Your

1 Honor, yes.

2 THE COURT: That's going to be the Court's
3 expectation.

4 MR. CALFO: And, well, we're doing two
5 things. He has until November 9th to decide, but my
6 understanding talking to him and understanding the lay
7 of the land is that he does not want anybody other than
8 us to handle the hearing on the 10th and the 11th and
9 the issues surrounding his kidnapping, or the
10 Government likes to call it a rendition. Those issues
11 are going to be handled by Ms. Ostrovsky and I.

12 THE COURT: Okay. All right. Sorry,
13 counsel. Please continue.

14 MR. CALFO: The only other thing I would say,
15 Your Honor, practically speaking, just some
16 considerations, Your Honor, I do think we need to go
17 back and look at the protective order and make sure --
18 there are proposals that we would recommend to
19 Mr. Seleznev to ask the Court to consider. He is in
20 the SHU and has been for a long time and is going to be
21 for the foreseeable future. To the extent this is
22 premised on his ability to talk to Mr. Green or anybody
23 else, that isn't happening right now, and it won't be
24 for the foreseeable future.

25 The only thing other thing I'll mention, Your

1 Honor -- I'm not going to reargue the motion. It's
2 just a practical problem that I think we all need to
3 understand. And that is, because all of these
4 conversations that Mr. Seleznev is having with his
5 father and others, you know, they're being recorded.
6 We know that in the past, Mr. Seleznev has talked about
7 strategy that we have spoken to him about. And
8 there's -- we have a concern about how this is going to
9 play out over time. If we're talking to Mr. Seleznev,
10 and then he is going to others and explaining what
11 we're telling him, that ends up in the prosecutor's
12 office. And, I mean, to me, it just is an unfair
13 situation that is the result of the fact this fellow is
14 unfamiliar with our system. He's a Russian national.
15 He has nobody here that he trusts. This whole
16 proceeding arises out of a lack of trust and a lack of
17 familiarity with our system. And his discussions with
18 his father arise out of the same thing.

19 He doesn't understand how prejudicial it will
20 be for those conversations to continue to happen with
21 his father and end up in the hands of the prosecutors.
22 They have already been prejudicial, because I think
23 some of the things that have been presented to Your
24 Honor probably have affected the Court's outlook in
25 some fashion, or at least are put in the mix.

1 So I'm not going to re-ask for it now, Your
2 Honor, but I can see a situation down the road where we
3 have to come to the Court and say, this is simply
4 untenable. We can't talk to Mr. Seleznev privately,
5 because he's got this hybrid representation situation.
6 He's going to talk to his father, Mr. Green, to others,
7 and everything we say ends up in the prosecutor's
8 earshot. And so, you know, our representation can't be
9 effective. And that's an issue I'm concerned about
10 that is, I think, heightened by the fact we're going
11 down the road of hybrid representation where he's going
12 to be looking to those folks for assistance.

13 I know, Your Honor, I'm not asking you for
14 anything specific other than what you have already
15 denied. So we have got the protective order issue. We
16 have got the tapes going to the prosecutor issue that I
17 see as problematic. We have got him in the SHU where
18 he can't talk to the people that this whole thing is
19 premised on. And then you have got us sort of in a
20 situation where we could -- might as well call
21 Mr. Wilkinson and tell him what we're telling
22 Mr. Seleznev as to some things, because they're ending
23 up in that situation anyway.

24 Your Honor, the only thing I would ask
25 practically on that latter point, if the prosecutors

1 are getting transcripts of those conversations, that
2 there be no delay between the time they get them and
3 the time they send them to me. I'm not suggesting
4 there has been, but to me, I mean, it's got to be done
5 within 24 hours. We need to know what they're learning
6 about our defense strategy immediately so that we can
7 act accordingly. That's the one thing I would ask the
8 Court to consider.

9 THE COURT: Counsel, just the Court's
10 response to a couple of things. I tried to advise your
11 client of the risks of talking about his case on those
12 telephones. I understand that there's a language
13 barrier that your client has. But at the same time, he
14 is proceeding at his own risk and his own peril if he
15 wishes to discuss his case and the strategy with the
16 people that are not his lawyers. I tried my best to
17 make sure that he understood that he loses that
18 umbrella of protection when he chooses not to have
19 counsel be the source of his communications for legal
20 advice. I believe that you've probably and hopefully,
21 and I trust that you have explained the risks that he
22 poses and runs by sharing that type of information.
23 And he puts himself at the same peril as if a United
24 States citizen were to take the information his lawyer
25 shared with him and shared it with his family in an

1 open communication, and that family member came back
2 and told the Government what was discussed. That's a
3 risk that's taken when you divulge the communications
4 that are protected by the attorney-client privilege.
5 And that's exactly the predicament that your client
6 puts himself in by wanting to discuss strategy. Is he
7 in a difficult situation? Absolutely, yes. I don't
8 disagree with you, counsel. But at the same time, if
9 he chooses to have other people other than his lawyers
10 providing him legal advice, that's a risk and peril
11 that he runs.

12 Now, let's talk about the question counsel
13 asked the Court regarding the absence of any delay in
14 providing copies. And, again, I don't see Mr. Calfo
15 casting any negative aspersions or allegations against
16 the government by not having done that already, but I
17 just want to have affirmation from the Government in
18 terms of what your compliance with that request would
19 be in the future or your opposition to the request.

20 MR. BARBOSA: I definitely would oppose a
21 24-hour turn around. We need some processing time to
22 put them in the database and send them out. Typically
23 it takes us anywhere from five to six days to get it
24 into our discovery database. We receive them via
25 email, sometimes via email, sometimes via disk from the

1 BOP.

2 THE COURT: The directive from the Court will
3 be that you exercise all due speed to get the
4 information to the defense. I don't want any
5 unnecessary delays. As soon as the Government has it
6 in a packageable form, it can be communicated to
7 defense and provided. Again, there's been no
8 allegation that you haven't been doing that, but I
9 think it's one of precaution counsel is asking the
10 Court to do. And I think it's also to protect his
11 client, make sure his client understands that that
12 information will be shared with his lawyers as soon as
13 possible.

14 With that understanding, I don't think I need
15 to take any further action. Would you agree,
16 Mr. Calfo?

17 MR. CALFO: Yes, Your Honor. I appreciate
18 that. Thank you.

19 THE COURT: Is there anything further that we
20 need to address at this time?

21 MR. CALFO: No, Your Honor.

22 THE COURT: Counsel for the Government?

23 MR. BARBOSA: Just in terms of the schedules.
24 November 9th, for coming back to the Court, I assume
25 you had indicated that we would have a hearing on that

1 date. We'll come back to court with a proposal on the
2 motions that Mr. Seleznev will be handling, and we will
3 try to work out schedules at least of pretrial motions
4 1. Is that correct?

5 THE COURT: That's my understanding, counsel.

6 MR. BARBOSA: In terms of all other
7 non-motion deadlines, those are still in place, and the
8 trial date is still firm. Is that correct?

9 THE COURT: The trial date is definitely
10 still firm. I don't see any reason to modify any of
11 the other deadlines. Do you, Mr. Calfo?

12 MR. CALFO: Your Honor, I don't want to move
13 the trial date, but things are getting pushed back. As
14 you know, we're in a private practice where there are a
15 lot of other deadlines that we're trying to meet, and
16 we make those deadlines around the ones that were set
17 forth in the case scheduling order. If I have to ask
18 for more time on something, I wanted to reserve the
19 ability to do that. But it's not my intention to delay
20 for any other reason than to make sure I can represent
21 Mr. Seleznev appropriately.

22 THE COURT: Counsel, I can't tell you that
23 you can't file a motion if you believe there's a valid,
24 legitimate basis to request a continuance. I will give
25 you a heads up that the likelihood that a postponement

1 or a delay of this case is going to be granted from
2 this Court -- unless there's something significantly
3 different from where we are right now, that's the date
4 you should expect to go to trial.

5 MR. CALFO: That's understood, Your Honor.

6 THE COURT: Anything further from the
7 parties?

8 MR. BARBOSA: No, Your Honor.

9 THE COURT: What date do we have the parties
10 back in the Court? The reason I'm going to have you
11 come back into the court is I don't want to have any
12 reason for there to be any confusion or
13 misunderstanding about what's been proposed to this
14 Court. That may be a five-minute hearing, but I want
15 to make sure that Mr. Seleznev is committed and
16 understands the specifics of what's being communicated
17 to the Court and what schedule the Court's operating
18 under. So it may require you to come back to this
19 Court more than you normally would, but I want to make
20 sure there's no question about what's expected,
21 particularly since there's hybrid representation on
22 those motions. This isn't counsel advancing the
23 motion. This is the defendant advancing what he
24 believes are the motions he wants to bring to the
25 Court's attention. And I also want to ensure these are

1 the defendant's specific areas of responsibility, as
2 compared to those of counsels' responsibility. So
3 that's a conversation we're going to have on the 9th.

4 MR. BARBOSA: One other matter I forgot to
5 address in terms of if we're not laying out what
6 motions Mr. Seleznev will address for pretrial motions
7 2 at this point, I assume that deadline will remain the
8 same. The Court is expecting us to work that out well
9 in advance of the next pretrial --

10 THE COURT: All the other deadlines will
11 remain the same.

12 MR. CALFO: Which deadline was being raised?

13 THE COURT: The second. The second round.

14 MR. CALFO: Yes, Your Honor. Same response.

15 THE COURT: Yes. All right. Anything
16 further from the Government?

17 MR. BARBOSA: No, thank you, Your Honor.

18 THE COURT: Anything further from the
19 defense?

20 MR. CALFO: No, Your Honor.

21 THE COURT: We'll be in recess.

22 MR. BARBOSA: The one thing we have still
23 left unaddressed is counsel's pretrial motions deadline
24 1. We did file a motion to reset that. It was
25 stricken in light of this hearing. Counsel is clearly

1 intending to file a set of pretrial motions. So we
2 will need to schedule the deadline to file their
3 motions that are independent of what Mr. Seleznev is
4 addressing. Is that something that the Court intended
5 to handle at the November 9th hearing?

6 THE COURT: Is that something the parties can
7 meet and confer about?

8 MR. CALFO: Yes, Your Honor.

9 THE COURT: Any reason you can't do that?

10 MR. BARBOSA: No, Your Honor.

11 THE COURT: I want to give you a chance to
12 propose what you think are reasonable dates so we don't
13 have any conflict. I can set dates right now, but
14 don't think you want to go with the dates I'm going to
15 give you right now. So I'm going to give you a chance
16 to have your own hand crafting the resolution to the
17 deadlines proposed to the Court and build in enough
18 time for the Court to address the motions as well.

19 Is there anything further? All right. We'll
20 be in recess. Thank you.

21 (Proceedings adjourned.)

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25

1 C E R T I F I C A T E

2 State of Washington)

3) Ss.

4 County of King)

5

6 I, the undersigned Certified Court Reporter and
7 an Officer of the Court for the State of Washington hereby
8 certify that the foregoing Proceedings before the Honorable
9 Richard A. Jones was transcribed under my direction;

10 That the transcript of the Proceedings is a full,
11 true, and correct transcript to the best of my ability; that
12 I am neither attorney for, nor a relative or employee of,
13 any of the parties to the action or any attorney or counsel
14 employed by the parties hereto, nor financially interested
15 in its outcome.

16 IN WITNESS WHEREOF, I have hereunto set my hand
17 this date, November 2, 2015:

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/S/Yvonne A. Southworth

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Yvonne A. Southworth

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